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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

4:18-CR-6054-EFS

SAMI ANWAR,

Defendant.

## United States' Response to Defendant's Emergency Motion for Compassionate Release (COVID-19)

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Tyler H.L. Tornabene and Daniel Hugo Fruchter, Assistant United States Attorneys for the Eastern District of Washington, submits the following response to Defendant's Emergency Motion for Compassionate Release (COVID-19) and request that this Court deny Defendant's motion.

## I. INTRODUCTION

Defendant, Sami Anwar, asks this Court to reduce his sentence of imprisonment under 18 U.S.C. § 3582(c)(1)(A) due to risks associated with the COVID-19 pandemic. Defendant has exhausted the required administrative procedure with the Bureau of Prisons (“BOP”) to bring the instant motion. However, for the reasons set forth below, Defendant fails to show any extraordinary and compelling reasons

1 justifying any reduction or alteration of his sentence and the 18 U.S.C. § 3553(a)  
2 factors, in particular the egregious nature and circumstances of his offenses as well as  
3 his own history and characteristics, all support denying Defendant's motion.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 Clinical research trial data is the cornerstone for medical advancements,  
6 treatments, and procedures. The U.S. Food and Drug Administration (FDA) relies on  
7 this research to determine medication approvals, and to inform the public about  
8 medication purposes and side effects. This information impacts the health of millions  
9 of Americans, and any corruption of that data jeopardizes the validity of properly  
10 conducted FDA clinical trials.

11 Between 2013 and 2018, Defendant and his two companies, Zain Research LLC  
12 and Mid-Columbia Research LLC, falsified numerous human clinical research trials  
13 with goals to bill for as many subjects as possible by pretending to operate a well-  
14 functioning trial study and to obstruct any enforcement body. ECF No. 200. During  
15 this five (5) year period, Defendant's fraudulent activity included: (1) admitting  
16 ineligible subjects into the studies, frequently by falsifying medical documentation  
17 and misrepresenting their medical histories and physical conditions; (2) falsifying  
18 progress notes, vital signs, drug dispensing data, and other documents to make it  
19 appear as though subjects were legitimately participating in the trials when they were  
20 not; (3) falsifying documents to make it appear as though the trials were being  
21 performed and supervised by a licensed physician when they were not, and posing as a  
22 physician on the phone and in person; (4) hoarding and destroying study medications  
23 in order to make it appear that they were being dispensed as required and conceal that  
24 subjects were not legitimately participating in the trials; (5) failing to report adverse  
25 events and significant adverse events experienced by trial subjects; (6) falsifying  
26 laboratory testing by submitting blood and urine samples from site employees, other  
27 research subjects, or unrelated medical patients and falsely labeling them as coming

1 from research subjects; and (7) fabricating diary entries required to be completed by  
2 study subjects. *Id.* at 3.

3 In these actions, Defendant tainted and corrupted the integrity of the clinical  
4 health system for monetary gain. From 2014-2017, Defendant generated at least  
5 \$5,648,79.78 in ill-gotten revenue from his fraudulent scheme, which equated to the  
6 corresponding calculable loss he caused. *Id.* at 5-6. While this amount represents the  
7 money paid by clinical trial sponsors and monitors, there are multiple uncalculated  
8 economic losses including the expenses of collecting the data, the damage to the  
9 studies themselves, and the impact on the FDA's drug approval process, which is not  
10 accounted for in the millions of dollars Defendant reaped from the fraud. *Id.* at 200;  
11 ECF No. 198 at 10, 12, 114.

12 Worse yet, in a years-long campaign to cover up his fraudulent acts, Defendant  
13 harassed, threatened, and intimidated dozens of his employees. ECF No. 200 at 10.  
14 For example, to deter his employees from exposing his illegal actions, Defendant  
15 stalked them, filed false reports to the police and relevant medical boards, created  
16 a false FDA complain, launched frivolous and retaliatory litigation, slashed  
17 employees' tires, and threatened his employees and their families with deportation,  
18 jail time, and financial ruin. ECF No. 188 at ¶¶ 84-89. Moreover, Defendant routinely  
19 put the clinical trial subjects in very real danger. For instance, at least one subject in  
20 multiple fraudulent trials conducted by Defendant passed away during his  
21 participation in the trials. ECF No. 200 at 7-8. Because of Defendant's fraud, this  
22 subject was not being evaluated by a physician, nor was his participation or medical  
23 condition being appropriately monitored. *Id.* Moreover, at Defendant's specific  
24 instruction, this subject's death was not reported as a significant adverse event, as  
25 required. *Id.* Other subjects also suffered serious bodily injury as a result of  
26 Defendant's fraud. For example, one of the teenage subjects in the Smoking  
27 Cessation Study attempted suicide and was hospitalized. *Id.* Additionally, another  
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1 victim's three-year old child was falsely enrolled in a study without parental  
 2 supervision and subsequently is permanently scarred and injured. *Id.* at 8.  
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4 Even during the investigation, Defendant threatened witnesses, employees, and  
 5 former employees, to prevent them from cooperating with law enforcement. ECF No.  
 6 188 ¶¶ 88-98. Defendant's employees feared him and his threats. For instance, one of  
 7 Defendant's employees was so afraid of Defendant's threats that she created an  
 8 emergency plan for her family, increased her home's lightening, and slept in her  
 9 child's bed armed with a knife for a period time. *Id.* at 98. Another employee reported  
 10 Defendant showed him a picture of himself with gang members and Defendant  
 11 threatened to use his connections against the employee. *Id.* at 100. He also would  
 12 appear at employees houses unannounced. *Id.* ¶¶ 103, 104. Similarly, he would  
 13 threaten their physical wellbeing as well as their professional reputation and or work  
 14 status. *Id.*

15 In addition, Defendant continued to obstruct justice even after his arrest and  
 16 incarceration. In September of 2019, Defendant smuggled a phone into the Benton  
 17 County Jail and appears to have used it to direct the destruction of evidence. ECF No.  
 18 200 at 14. He also provided false information to judicial officers, to law enforcement  
 19 and to government agencies. *Id.* In all Defendant's egregious activities to his  
 20 employees and to the public, there is one consistent thread: Defendant chose to  
 21 monetize, for his selfish gain, the suffering and danger he inflicted upon his clinical  
 22 trial subjects, his employees, and the public at large.

23 On November 22, 2019, a jury found Defendant guilty on all 47 counts of the  
 24 indictment which include Conspiracy to Commit Wire Fraud, Conspiracy to Commit  
 25 Mail Fraud, Wire Fraud, Mail Fraud, Fraudulently Obtaining Controlled Substances,  
 26 and Furnishing False of Fraudulent Material Information. On October 6, 2020  
 27 Defendant was sentenced to 340 months of imprisonment. ECF No. 241.  
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### III. EXHAUSTION

1 To proceed in district court on a compassionate release claim, a defendant must  
 2 follow the proper procedure. Here, the exhaustion of administrative remedies is a  
 3 mandatory claim-processing rule.<sup>1</sup> Claim-processing rules are those that “seek to  
 4 promote the orderly progress of litigation by requiring that the parties take certain  
 5 procedural steps at certain specified times.” *Fort Bend County, Texas v. Davis*, 139 S.  
 6 Ct. 1843, 1849 (2019). Such rules “may be ‘mandatory’ in the sense that a court must  
 7 enforce the rule if a party properly raises it,” but a litigant can forfeit reliance on the  
 8 rule by not timely raising it. *Id.* at 1849 (internal quotation marks and brackets  
 9 omitted). Here, Defendant submitted an administrative request for compassionate  
 10 release to the Warden of his facility on December 17, 2021. The Warden of his facility  
 11 did not respond, and because 30 days has passes since the request, the Warden’s  
 12 silence is considered a constructive denial. Despite being unvaccinated, Defendant  
 13 raised the issue of his risk for serious illness from COVID-19 because he is 43 years  
 14 of age and is suffering from thyroid cancer, Types 2 Diabetes, headaches, the  
 15 occurrence of one panic attack, and his anxiety. ECF No. 289 at 8, 10. He thus  
 16 requests his imprisonment be suspended and his sentence be reduced to time served so  
 17 he may begin a 3-year term of supervised release on home confinement conditions. *Id.*  
 18 at 8, 9.

#### 19 IV. BOP RESPONSE TO THE PANDEMIC

20 As the Court is aware, from the moment the pandemic began, the BOP made  
 21 extensive changes to its operations, based on a plan that was prepared over many  
 22 years, and refined in early 2020 in consultation with the Centers for Disease Control

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23  
 24 <sup>1</sup> The Department of Justice asserted in similar litigation that this was a jurisdictional  
 25 rule; however, it has modified its position in light of the Supreme Court’s decision in  
 26 *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843, 1849 (2019) and its progeny. See  
 27 e.g. *United States v. Franco*, --- F.3d ----, 2020 WL 5249369, at \*1-\*2 (5th Cir. Sept.  
 28 3, 2020); *United States v. Alam*, 960 F.3d 831, 833-836 (6th Cir. 2020).

1 (CDC) and the World Health Organization. Those efforts continue. The United  
2 States recognizes that the COVID-19 case rate at a particular institution may change at  
3 any time. The United States therefore focuses primarily on considerations specific to  
4 the Defendant. However, BOP's success at many institutions in limiting the spread of  
5 the virus, and in stemming outbreaks when they occur, provides an important  
6 backdrop for the instant motion.

7 BOP's "action plan" is described in detail at [www.bop.gov/coronavirus/](http://www.bop.gov/coronavirus/). As  
8 part of that plan, all newly arriving inmates are quarantined and not released into the  
9 general population until 14 days have passed and the inmate has tested negative;  
10 inmate movement within an institution is restricted in order to promote social  
11 distancing; mask wearing by inmates and staff is required; all facility staff are  
12 screened for symptoms daily; social visiting has been suspended at nearly all  
13 institutions; and access by other outsiders is restricted to only those performing  
14 essential services, who are also screened before entry.

15 In addition, acting under the authority granted in the CARES Act, BOP has  
16 transferred many thousands of inmates to home confinement, focusing on nonviolent  
17 offenders who have served the majority of their sentences. This initiative, combined  
18 with the reduced number of new arrivals during the pandemic and the ordinary release  
19 of prisoners upon completion of their sentences, has led to a dramatic decrease in the  
20 total BOP population, which in turn has increased opportunities for social distancing  
21 and reduced the strain on BOP resources. When an outbreak does occur, any infected  
22 inmate is immediately quarantined, and all contacts (including entire housing units if  
23 warranted) are tested and quarantined as necessary, until all contacts return at least  
24 two negative tests in a two-week period.

25 All of these strenuous efforts have been fruitful. To be sure, there is no way to  
26 stop this virus short of widespread vaccination, and inmates inevitably will be  
27 infected, and some may succumb, just as in the population at large. However, BOP  
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1 continues to take aggressive and appropriate steps to prevent COVID-19 infections  
2 among those in its care

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4 **V. LEGAL FRAMEWORK**

5 Motions for compassionate release are governed by 18 U.S.C. § 3582(c)(1)(A).  
6 In its original form, that statute permitted the courts to consider motions by the  
7 Director of the Bureau of Prisons to reduce a defendant's sentence for "extraordinary  
8 and compelling reasons." 18 U.S.C. § 3582(c)(1)(A) (effective November 2, 2002).  
9 The statute did not define "extraordinary and compelling reasons" but required any  
10 reduction to be consistent with applicable policy statements issued by the United  
11 States Sentencing Commission. *Id.* Those policy statements are set forth at USSG  
12 §1B1.13 and include commentary that does define "extraordinary and compelling  
13 reasons" through a list of conditions. USSG §1B1.13, comment. (n.1). That list is non-  
14 exclusive because it includes a catch-all category for "extraordinary and compelling  
15 reasons other than, or in combination with," the reasons specifically enumerated.  
16 USSG §1B1.13, comment. (n.1(D)). The policy statement also includes a general  
17 condition that a defendant not be "a danger to the safety of any person or to the  
18 community." USSG §1B1.13(2). The statute incorporated the policy statement by  
19 requiring any reductions to be consistent with it. The statute also required district  
20 courts to consider the sentencing factors set forth in 18 U.S.C. § 3553 "to the extent  
21 that they were applicable." 18 U.S.C. § 3582(c)(1)(A).

22 In 2018, the statute was amended to permit motions brought directly by  
23 inmates. 18 U.S.C. § 3582(c)(1)(A) (enacted December 26, 2018). The amended  
24 statute continued to require motions to be considered in light of the sentencing factors  
25 set forth in 18 U.S.C. § 3553(a) and "applicable policy statements issued by the  
26 Sentencing Commission." *Id.* However, since the policy statement was not similarly  
27 amended, it continues to reference only those motions brought by "the Director of the  
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1 Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A)," not those brought directly by  
 2 inmates. USSG §1B1.13.

3 Recently, the Ninth Circuit joined several other Circuits in holding that  
 4 pursuant to the First Step Act's amendment to 18 U.S.C. § 3582, the previously  
 5 otherwise applicable USSG policy statements defining "extraordinary and compelling  
 6 reasons" are no longer binding upon the district court in consideration of  
 7 compassionate release requests filed by a defendant. *See United States v. Aruda*, 993  
 8 F.3d 797 (9th Cir. 2021). However, the Guidelines policy statement remains  
 9 instructive and relevant in this analysis:

10 The Sentencing Commission's statements in U.S.S.G. § 1B1.13 may  
 11 inform a district court's discretion for § 3582(c)(1)(A) motions filed  
 12 by a defendant, but they are not binding.

13 *Id.* at 802. *See also United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020); *United*  
 14 *States v. Jones*, 980 F.3d 1098 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178  
 15 (7th Cir. 2020). Indeed, in *Gunn* the Seventh Circuit instructed that the policy  
 16 statement provided district courts with a useful guide for its analysis and a tool for  
 17 avoiding error:

18 Like the Second Circuit, we do not see the absence of an applicable  
 19 policy statement as creating a sort of Wild West in court, with every  
 20 district judge having an idiosyncratic release policy. . . . The substantive  
 21 aspects of the Sentencing Commission's analysis in § 1B1.13 and its  
 22 Application Notes provide a working definition of "extraordinary and  
 23 compelling reasons"; a judge who strikes off on a different path risks an  
 24 appellate holding that judicial discretion has been abused. *In this way the*  
 25 *Commission's analysis can guide discretion without being conclusive.*

26 *Id.* at 1180 (emphasis added).<sup>2</sup>

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27 <sup>2</sup> The Fifth Circuit recently came to a similar conclusion, noting that although  
 28 USSG §1B1.13 is not "dispositive" it still "informs our analysis as to what reasons  
 may be sufficiently 'extraordinary and compelling' to merit compassionate release."  
*United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021).

1 In their limited capacity as guide, the application notes to USSG §1B1.13  
 2 provide that “extraordinary and compelling reasons” exist when the defendant is  
 3 suffering from a terminal illness, the defendant is suffering from a serious physical or  
 4 medical condition, serious functional or cognitive impairment, or experiencing  
 5 deteriorating physical or mental health that substantially diminishes the ability of the  
 6 defendant to provide self-care within the environment of the correctional facility and  
 7 from which he or she is not expected to recover. *See* USSG §1B1.13 comment. (n.1).

8 A defendant bears the burden to demonstrate she is eligible for such a  
 9 sentencing reduction. *See, e.g., United States v. Sprague*, 135 F.3d 1301, 1306-07 (9th  
 10 Cir. 1998) (“in a typical motion under 18 U.S.C. § 3582(c),” the movant bears the  
 11 burden to show eligibility for a reduction in sentence); *see also United States v.*  
 12 *Shabudin*, 445 F. Supp. 3d 212, 214 (N.D. Cal. 2020); *United States v. Koval*, 2020  
 13 WL 4476554, at \*3 (E.D. Cal. Aug. 4, 2020) (citing additional examples). Otherwise,  
 14 the overriding principle in the criminal justice system is that judgements are final.  
 15 *See, e.g., Teague v. Lane*, 489 U.S. 288, 309 (1989). Claims of rehabilitation as the  
 16 sole basis for a reduction of a defendant’s sentence are expressly and statutorily  
 17 excluded. 28 U.S.C. § 994(t) (“Rehabilitation along shall not be considered an  
 18 extraordinary and compelling reason” in considering a sentencing reduction under 18  
 19 U.S.C. § 3582(a)).

20 VI. **DISCUSSION**

21 A. Defendant Has Not Identified “Extraordinary and Compelling Reasons”  
 22 Warranting a Sentence Reduction or Release.

23 Defendant first asserts that he is at high risk for serious complication or death  
 24 should he be infected with COVID-19. ECF No. 289 at 8, 9. Defendant states he has a  
 25 history of “papillary thyroid cancer, type 2 diabetes, a history of one documented  
 26 panic attack and anxiety disorder, and reoccurring headaches.” ECF No. 289 at 10.  
 27 However, a closer look at the Defendant’s medical history and BOP records illustrates  
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1 a different story which does not represent an “extraordinary and compelling reason”  
2 for early release.

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5 *1. Defendant’s medical conditions do not constitute an extraordinary and*  
6 *compelling reason for sentencing reduction or release.*

7 Defendant claims his health conditions put him at risk for severe illness or death  
8 from COVID-19. These health conditions consist of thyroid cancer, his diabetes, his  
9 “history” of panic and anxiety disorder, and concurrent headaches.

10 *a. Defendant’s Thyroid Condition*

11 While the Defendant proclaims that he has incredible concern for his health and  
12 risk to COVID-19, he has taken no precautions himself to ensure his safety and  
13 therefore has no basis for compassionate release. The CDC outlines various ways to  
14 combat COVID-19, three important examples include: (1) taking preventive actions,  
15 such as washing your hands and not touching your nose and mouth, (2) wearing a  
16 mask and social distancing, and (3) obtaining a COVID-19 vaccination. *See* “How to  
17 Protect Yourself and Others”, CDC, updated Feb. 25, 2022,  
18 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> .  
19 Washing hands and not touching one’s face is done at an individual’s own accord. In  
20 relation to masks, as outlined above, the BOP has implemented a number of  
21 procedures to allow everyday preventative actions. According to the BOP,  
22 Defendant’s correctional facility, Sheridan, Federal Correctional Institute, is at a Level  
23 Two (2) rating.<sup>3</sup> *See* “BOP: Covid -19 Update, <https://www.bop.gov/coronavirus/>.  
24 Meaning, face coverings are required at all times: indoors and outdoors, when social  
25 distancing is not possible by both inmates and correctional officers. *Id.* Due to their  
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28 <sup>3</sup> Defendant incorrectly labels Sheridan, FCI as Level 1. ECF No. 289 at 25.

1 level two status, FCI Sheridan has limited capacities both indoors and outdoors to  
2 limit exposure and ensure the safety of its inmates and staff. *Id.*

3 Despite Defendant's reliance on CDC guidelines, Defendant has declined to  
4 take the suggested measures available to protect himself from COVID-19 infection  
5 and prevent serious illness or complications. Simply put, the best option to combat  
6 COVID-19 is to get vaccinated. *See* "COVID-19 Vaccines in People with Cancer",  
7 American Cancer Society, last revised March 30, 2022,  
8 [https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-](https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html)  
9 [effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html](https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html);  
10 *see* "COVID-19 Vaccines Work", CDC, last updated Dec. 23, 2021. Defendant claims  
11 he "refused to be vaccinated because information at the time did not affirmatively  
12 indicate the vaccine was safe for cancer patients", however both the CDC and the  
13 American Cancer Society have recommended that cancer patients should receive a  
14 vaccine. ECF No. 289 at 29; *see* "COVID-19 Vaccines in People with Cancer".  
15 American Cancer Society, last revised March 30, 2022,  
16 [https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-](https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html)  
17 [effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html](https://www.cancer.org/treatment/treatments-and-side-effects/physical-side-effects/low-blood-counts/infections/covid-19-vaccines-in-people-with-cancer.html);  
18 *see* "COVID-19 Vaccines Work", CDC, last updated Dec. 23, 2021. The CDC and the  
19 American Cancer society have long urged cancer patients and other  
20 immunocompromised individuals to obtain a COVID-19 vaccination. *Id.* In fact, the  
21 National Cancer Institute recommended those with cancer receive COVID-19  
22 vaccinations as early as 2020. *See* "Covid-19 Vaccines and People with Cancer: Q&A  
23 with Dr. Steven Pergam", National Cancer Institute, last updated March 2020,  
24 [https://www.cancer.gov/about-cancer/coronavirus/covid-19-vaccines-people-with-](https://www.cancer.gov/about-cancer/coronavirus/covid-19-vaccines-people-with-cancer)  
25 cancer. Defendant was offered the COVID-19 vaccine, and additional information on  
26 the vaccine given his health status, on February 24, 2021, and he refused to get  
27  
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1 vaccinated. Exhibit A.<sup>4</sup> Contrary to the Defendant's assertions, there is no  
2 documentation in Defendant's BOP medical files illustrating any additional interest in  
3 receiving a COVID-19 vaccine. *See* ECF No. 289 at 21.

4 In addition, papillary thyroid cancer is the thyroid cancer with the best  
5 prognosis and can be cured if treated early and appropriately. "Papillary Thyroid  
6 Cancer", Columbia Thyroid Center, <https://columbiasurgery.org/conditions-and-treatments/papillary-thyroid-cancer>. Based on Defendant's medical records, it is clear  
7 that Defendant's cancer condition has been monitored and he has been prescribed  
8 medication. Moreover, Defendant was offered the opportunity to conduct an oncology  
9 surgery to avoid the risk of his cancer spreading, yet he refused. Exhibit A.

10 Additionally, Defendant's diagnosis of thyroid cancer does not serve as a basis  
11 for compassionate release. By way of contrast, one district court found that a  
12 defendant with terminal stage III lung cancer (with a 25% survival rate), in  
13 conjunction with chronic obstructive pulmonary disease, and medical records  
14 suggesting that BOP delayed in diagnosing and treating that defendant for over a year,  
15 all combined with COVID-19 pandemic (well prior to a vaccine being available)  
16 supported compassionate release. *United States v. Smith*, 464 F. Supp. 3d 1009, 1019  
17 (N.D. Iowa 2020). However, in a case where a defendant was a thyroid cancer  
18 survivor with additional health risks during the pandemic, the court denied his motion  
19 for compassionate release, reasoning in part that the defendant was able to receive  
20 proper medication. *United States v. Figueroa*, 850 F. App'x 818, 819 (3d Cir. 2021).  
21 Here, Defendant's condition is not terminal, he has and is obtaining all necessary  
22 medical care, and Defendant has acted careless with his illnesses and overall health  
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25 <sup>4</sup> Based on the timing of obtaining Defendant's medical records from BOP, the United  
26 States will file "Exhibit A" under seal with the Court tomorrow. The United States has  
27 provided a courtesy copy of Exhibit A via email to the Court and to counsel for  
28 Defendant.

1 including refusing the widely available and effective COVID-19 vaccine.  
 2 Consequently, this Court should find that Defendant's medical conditions in no way  
 3 constitute an extraordinary and compelling reason for sentence reduction or release.

4       *b. Defendant's Additional Medical Concerns*

5 Furthermore, Defendant argues that his additional "health conditions" raise  
 6 concern, putting him at risk for obtaining COVID-19. These additional concerns  
 7 include type II diabetes, anxiety attacks, and headaches. However, Defendant has  
 8 consistently received his diabetes medication regularly by BOP medical providers,  
 9 which help to monitor and control it. Exhibit A. Similarly, Defendant claims he  
 10 suffers from anxiety and panic attacks. However, in his BOP records, only one panic  
 11 attack was reported and, when health professionals offered him medication  
 12 (specifically Ativan) to help address this anxiety, he refused. Exhibit A. In relation to  
 13 Defendant's chronic headaches, his medical records detail that he has reported that  
 14 ibuprofen helped relieve his pain. In addition, the BOP went so far as to order a CT to  
 15 ensure Defendant's neurological health. *Id.* The CT was normal. *Id.*

16       Despite all Defendant's professed fears of the impact that COVID-19 would  
 17 have on him (while not availing himself of the vaccine), Defendant tested positive for  
 18 COVID-19 on September 16<sup>th</sup> but had mild symptoms. Defendant states that he was  
 19 "throwing up blood every day. He had blood clots in his arms and legs", which  
 20 Defendant concedes is not in any documentation within the BOP. ECF 289 at 29;  
 21 Exhibit A. Rather, BOP documentation shows that Defendant "reports coughing up  
 22 small specks of blood". Exhibit A. At bottom, Defendant's medical records show he  
 23 contracted COVID-19 but recovered fully after suffering mild symptoms and being  
 24 given medication and support from the BOP staff. *Id.*

25       Nonetheless, Defendant argues that BOP employees are careless, for instance  
 26 by not noting that he has an allergy to penicillin. In his motion, Defendant states that  
 27 "the fact that he is allergic to penicillin" is not mentioned in his BOP medical  
 28 history. ECF 289 at 29. In fact, Defendant's allergy to penicillin is mentioned multiple

1 times, including but not limited to: February 28th, April 11th, October 3rd, 21st and  
2 24th, and December 16<sup>th</sup>. Exhibit A. Similarly, Defendant argues the BOP failed to  
3 test him regularly for COVID-19. *See* ECF No. 289 at 29. However, Defendant's  
4 medical records illustrate he was tested for COVID-19 on multiple occasions  
5 including October 21, 2020, November 4th, 2020, December 2-8, 2020, and so on.  
6 Exhibit A.

7 Overall, Defendant's medical conditions and concerns regarding his treatment  
8 come nowhere near an extraordinary and compelling reason that would justify any  
9 sentence reduction whatsoever let alone release.

10 B. The Sentencing Factors Set forth in 18 U.S.C. § 3553(a) Weigh Against Release  
11 and he is a threat to the community.

12 In addition to evaluating any "extraordinary and compelling reasons," the Court  
13 must also evaluate the 18 U.S.C. § 3553(a) factors to determine whether  
14 compassionate release is appropriate. Included in this analysis is an examination of the  
15 nature and circumstances of the offense as well as a defendant's own history and  
16 characteristics, of which this Court is quite familiar. 18 U.S.C. § 3553(a)(1). Even if  
17 this Court finds that Defendant's medical conditions somehow demonstrate  
18 extraordinary and compelling reasons for release, the Defendant's heinous conduct for  
19 which he was convicted by a jury and for which he was sentence, should preclude any  
20 reduction in his sentence or early release.

21 The common nucleus of Defendant's crimes was the monetization of the human  
22 suffering he knowingly and intentionally, directly and indirectly, caused for his own  
23 personal financial gain. The record shows that Defendant pursued his horrendous  
24 objectives with monomaniacal focus and without regard to what person or government  
25 agency stood in his way. He repeatedly provided false and corrupted data for human  
26 clinical trials on dozens of life saving drugs, these trials of course are the basis of the  
27 FDA's evaluation of efficacy and safety for the public. As such, Defendant's fraud  
28 impacted all Americans: those who needed and relied on these particular drugs and

1 those who were effectively seeking treatment through the impacted clinical trials, as  
2 well as the trust of all Americans in clinical research trials and the faith in the FDA  
3 that the public relies upon, especially during a global pandemic.

4 However, Defendant did not stop there. Throughout the investigation,  
5 Defendant obstructed justice and the investigation by failing to follow court orders.  
6 He smuggled in a phone into his correctional facility in September 2018 in an  
7 apparent effort to destroy evidence, which was seemingly successful. ECF 188 ¶ 101.  
8 Further, Defendant routinely threatened his employees into submission through an  
9 aggressive campaign dedicated to hiding his fraudulent actions. His tactics included  
10 filling fictitious police and medical reports, launching frivolous and retaliatory  
11 litigation, threatening deportation, and threatening and ensuring financial ruin. By way  
12 of further example, Defendant appeared at a former employee's new place of business  
13 and questioned her about potential cooperators against him causing her abject fear.  
14 ECF No. 188 ¶ 95. Defendant barged into another employee's apartment and  
15 threatened her in front of her 10-year-old son. ECF No. 188 ¶ 95. He showed photos  
16 of a high-ranking international terrorist in order to intimidate a specific employee.  
17 ECF No. 188 ¶ 100 Defendant threatened another employee that should she resign  
18 from her job, she would never be able to work in the medical field again and that he  
19 would report her to the relevant state licensing board. He later had her arrested for theft  
20 based on false information that he orchestrated, fortunately the police found no crime  
21 had been committed by his intended victim. ECF No 188 ¶ 84 In addition, Defendant  
22 sent letters to members of the medical community to not hire a former employee (and  
23 known cooperating informant) stating she was terminated for sexually harassing  
24 employees. Defendant did all this and more through a variety of highly focused and  
25 diabolic means. Releasing Defendant even one day before his originally imposed  
26 sentence, let alone decades, , would open the flood gates to future intimidating tactics  
27 by Defendant and unleash an absolute living nightmare for the former employees and  
28

1 witnesses Defendant has already victimized and intimidated as well as those he was  
2 stopped from terrorizing by virtue of his incarceration.  
3

4 Despite this overwhelming evidence, Defendant contends that he should be  
5 released under home confinement. However it is abundantly clear that home  
6 confinement will not stop Defendant from terrorizing his past employees and the  
7 witnesses against him.  
8

9 Similarly, home confinement will not stop Defendant from committing further  
10 fraud. As this Court is well aware from the record, Defendant established two  
11 companies to carry out his fraudulent crimes. Once one was uncovered, he created a  
12 new one and continued his fraudulent activity. Prior to his scheme unraveling,  
13 Defendant was preparing to repeat this cycle of fraud and obstruction. Home  
14 confinement would provide Defendant a golden opportunity to perpetrate further acts  
15 of fraud.  
16

## 17 CONCLUSION

18 Based on the foregoing, the United States respectfully submits that Defendant  
19 has not met his burden of establishing an extraordinary and compelling reason  
20 justifying a sentence reduction or early release and, in any event, the heinous nature of  
21 Defendant's crimes and the threat he would continue to pose to specific individuals  
22 and the public at large should preclude any modification of his sentence. This Court  
23 should therefore deny Defendant's Motion to Reduce Sentence.  
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28 RESPECTFULLY SUBMITTED this 4th day of May, 2022

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## **CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the counsel of record, Alan Ellis and Jeffrey K. Finer.

s/Tyler Tornabene  
Tyler H.L. Tornabene  
Assistant United States Attorney